

1974

c 131 The Business Practices Act, 1974

Ontario

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CHAPTER 131

**An Act to prohibit unfair
Practices in Sales to Consumers***Assented to February 14th, 1975*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,Interpre-
tation

- (a) "business premises" does not include a dwelling;
- (b) "consumer" means a natural person but does not include a natural person, partnership or association of individuals acting in the course of carrying on business;
- (c) "consumer representation" means a representation, statement, offer, request or proposal,
 - (i) made respecting or with a view to the supplying of goods or services, or both, to a consumer, or
 - (ii) made for the purpose of or with a view to receiving consideration for goods or services, or both, supplied or purporting to have been supplied to a consumer;
- (d) "Director" means the Director under *The Ministry of Consumer and Commercial Relations Act*; R.S.O. 1970, c. 113
- (e) "dwelling" means a premises or any part thereof occupied as living accommodation;
- (f) "goods" means chattels personal or any right or interest therein other than things in action and money, including chattels that become fixtures but not including securities as defined in *The Securities Act*; R.S.O. 1970, c. 426

- (g) "Minister" means the Minister of Consumer and Commercial Relations;
- (h) "regulations" means the regulations made under this Act;
- (i) "services" means services,
 - (i) provided in respect of goods or of real property, or
 - (ii) provided for social, recreational or self-improvement purposes, or
 - (iii) that are in their nature instructional or educational;
- (j) "Tribunal" means The Commercial Registration Appeal Tribunal under *The Ministry of Consumer and Commercial Relations Act*.

R.S.O. 1970,
c. 113

Unfair
practices

2. For the purposes of this Act, the following shall be deemed to be unfair practices,

- (a) a false, misleading or deceptive consumer representation including, but without limiting the generality of the foregoing,
 - (i) a representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or quantities they do not have,
 - (ii) a representation that the person who is to supply the goods or services has sponsorship, approval, status, affiliation or connection he does not have,
 - (iii) a representation that the goods are of a particular standard, quality, grade, style or model, if they are not,
 - (iv) a representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, provided that the reasonable use of goods to enable the seller to service, prepare, test and deliver the goods for the purpose of sale shall not be deemed to make the goods used for the purposes of this subclause,

- (v) a representation that the goods have been used to an extent that is materially different from the fact,
 - (vi) a representation that the goods or services are available for a reason that does not exist,
 - (vii) a representation that the goods or services have been supplied in accordance with a previous representation, if they have not,
 - (viii) a representation that the goods or services or any part thereof are available to the consumer when the person making the representation knows or ought to know they will not be supplied,
 - (ix) a representation that a service, part, replacement or repair is needed, if it is not,
 - (x) a representation that a specific price advantage exists, if it does not,
 - (xi) a representation that misrepresents the authority of a salesman, representative, employee or agent to negotiate the final terms of the proposed transaction,
 - (xii) a representation that the proposed transaction involves or does not involve rights, remedies or obligations if the representation is false or misleading,
 - (xiii) a representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive,
 - (xiv) a representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer ;
- (b) an unconscionable consumer representation made in respect of a particular transaction and in determining whether or not a consumer representation is unconscionable there may be taken into account that the person making the representation or his employer or principal knows or ought to know,
- (i) that the consumer is not reasonably able to protect his interests because of his physical infirmity, ignorance, illiteracy, inability to

understand the language of an agreement or similar factors,

- (ii) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers,
- (iii) that the consumer is unable to receive a substantial benefit from the subject-matter of the consumer representation,
- (iv) that there is no reasonable probability of payment of the obligation in full by the consumer,
- (v) that the proposed transaction is excessively one-sided in favour of someone other than the consumer,
- (vi) that the terms or conditions of the proposed transaction are so adverse to the consumer as to be inequitable,
- (vii) that he is making a misleading statement of opinion on which the consumer is likely to rely to his detriment,
- (viii) that he is subjecting the consumer to undue pressure to enter into the transaction;
- (c) such other consumer representations under clause a as are prescribed by the regulations made in accordance with section 16.

Unfair
practices
prohibited

3.—(1) No person shall engage in an unfair practice.

One act
deemed
practice

(2) A person who performs one act referred to in section 2 shall be deemed to be engaging in an unfair practice.

Rescission

4.—(1) Subject to subsection 2, any agreement, whether written, oral or implied, entered into by a consumer after a consumer representation that is an unfair practice and that induced the consumer to enter into the agreement,

- (a) may be rescinded by the consumer and the consumer is entitled to any remedy therefor that is at law available, including damages; or
- (b) where rescission is not possible because restitution is no longer possible, or because rescission would

deprive a third party of a right in the subject-matter of the agreement that he has acquired in good faith and for value, the consumer is entitled to recover the amount by which the amount paid under the agreement exceeds the fair value of the goods or services received under the agreement or damages, or both.

(2) Where the unfair practice referred to in subsection 1 comes within clause *b* of section 2, the court may award exemplary or punitive damages. Exemplary damages

(3) Each person who makes the consumer representation referred to in subsection 1 is liable jointly and severally with the person who entered into the agreement with the consumer for any amount that the consumer is entitled to under subsections 1 and 2. Liability

(4) Notwithstanding subsection 2 of section 42*a* of *The Consumer Protection Act*, the liability of an assignee of an agreement under subsection 1 or of any right to payment thereunder is limited to the amount paid to the assignee under the agreement. Liability of assignee R.S.O. 1970, c. 82

(5) A remedy conferred by subsection 1 may be claimed by the giving of notice of the claim by the consumer in writing to each other party to the agreement within six months after the agreement is entered into. Time for rescission

(6) A notice under subsection 5 may be delivered personally or sent by registered mail addressed to the person to whom delivery is required to be made, and delivery by registered mail shall be deemed to have been made at the time of mailing. Delivery of notice

(7) In the trial of an issue under subsection 1, oral evidence respecting an unfair practice is admissible notwithstanding that there is a written agreement and notwithstanding that the evidence pertains to a representation of a term, condition or undertaking that is or is not provided for in the agreement. Evidence

(8) This section applies notwithstanding any agreement or waiver to the contrary. Application

(9) Subsection 3 does not apply to a person who, on behalf of another person, prints, publishes, distributes, broadcasts or telecasts a representation or an advertisement that he accepts in good faith for printing, publishing, distributing, broadcasting or telecasting in the ordinary course of his business. Advertisers excepted from subs. 3

Duties of
Director

5. The Director shall,

- (a) perform such duties and exercise such powers as are given to or conferred upon the Director under this or any other Act;
- (b) receive and act on or mediate complaints respecting unfair practices;
- (c) maintain available for public inspection a record of,
 - (i) assurances of voluntary compliance entered into under this Act,
 - (ii) orders to cease engaging in unfair practices issued under this Act.

Order to
cease unfair
practice

6.—(1) Where the Director believes on reasonable and probable grounds that any person is engaging or has engaged in an unfair practice, the Director may order such person to comply with section 3 in respect of the unfair practice specified in the order.

Notice of
proposal

(2) Where the Director proposes to make an order under subsection 1, he shall serve notice of his proposal on each person to be named in the order together with written reasons therefor.

Request
for
hearing

(3) A notice under subsection 2 shall inform each person to be named in the order that he is entitled to a hearing by the Tribunal if he mails or delivers within fifteen days after the notice under subsection 2 is served on him notice in writing requiring a hearing to the Director and the Tribunal and he may so require such a hearing.

Failure
to request
hearing

(4) Where a person upon whom a notice is served under subsection 2 does not require a hearing by the Tribunal in accordance with subsection 3, the Director may carry out the proposal stated in the notice.

Hearing

(5) Where a person requires a hearing by the Tribunal in accordance with subsection 3, the Tribunal shall appoint a time for and hold the hearing and, on the application of the Director at the hearing, may by order direct the Director to carry out his proposal or to refrain from carrying out his proposal and to take such action as the Tribunal considers the Director ought to take in accordance with this Act and the regulations and for such purposes the Tribunal may substitute its opinion for that of the Director.

(6) The Tribunal may attach such terms and conditions ^{Conditions} to its order as it considers proper to give effect to the purposes of this Act.

(7) The Director and the person who has required the ^{Parties} hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

7.—(1) Notwithstanding section 6, the Director may ^{Order for immediate compliance} make an order under subsection 1 of section 6 to take effect immediately where, in his opinion, to do so is necessary for the protection of the public and, subject to subsections 3 and 4, the order takes effect immediately.

(2) Where the Director makes an order under subsection 1, ^{Notice of order} he shall serve each person named in the order with a copy of the order together with written reasons therefor and a notice containing the information required to be in a notice referred to in subsections 2 and 3 of section 6.

(3) Where a person named in the order requires a hearing ^{Hearing} by the Tribunal in accordance with the notice under subsection 2, the Tribunal shall appoint a time for and hold the hearing and may confirm or set aside the order or exercise such other powers as may be exercised in a proceeding under section 6.

(4) Where a hearing by the Tribunal is required, the ^{Expiration of order} order expires fifteen days after the giving of the notice requiring the hearing but, where the hearing is commenced before the expiration of the order, the Tribunal may extend the time of expiration until the hearing is concluded.

(5) The Director and the person who has required the ^{Parties} hearing and such other persons having a direct interest in the order as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

8. Notwithstanding that, under section 9b of *The Ministry ^{Stay} of Consumer and Commercial Relations Act*, an appeal is ^{R.S.O. 1970, c. 113} taken from an order of the Tribunal made under section 6 or 7, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

9.—(1) Any person against whom the Director proposes ^{Assurance of voluntary compliance} to make an order to comply with section 3 may enter into a written assurance of voluntary compliance in the prescribed form undertaking to not engage in the specified unfair practices after the date thereof.

Assurance
deemed
order

(2) Where an assurance of voluntary compliance is accepted by the Director, the assurance has and shall be given for all purposes of this Act the force and effect of an order made by the Director.

Under-
takings

(3) An assurance of voluntary compliance may include such undertakings as are acceptable to the Director and the Director may receive a bond and collateral therefor as security for the reimbursement of consumers and reimbursement of the Treasurer of Ontario for investigation and other costs in such amount as is satisfactory to the Director.

Investiga-
tions by
order of
Minister

10. The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of his investigation to the Minister and, for the purposes of the investigation, the person making it has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such investigation as if it were an inquiry under that Act.

1971, c. 49

Investiga-
tion by
Director

11.—(1) Where, upon a statement made under oath, the Director believes on reasonable and probable grounds that any person is contravening or is about to contravene any of the provisions of this Act or regulations or an order or assurance of voluntary compliance made or given pursuant to this Act, the Director may by order appoint one or more persons to make an investigation as to whether such a contravention of the Act, regulation, order or assurance of voluntary compliance has occurred and the person appointed shall report the result of his investigation to the Director.

Powers of
investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may,

- (a) upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, papers, documents and things relevant to the subject-matter of the investigation; and
- (b) inquire into the transactions, business affairs, management and practices that are relevant to the subject-matter of the investigation,

and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act. 1971, c. 49

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation. Obstruction of investigator

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under clause *a* of subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night. Search warrant

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, papers, documents or things examined under clause *a* of subsection 2 or subsection 4 relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, papers or documents, but such copying shall be carried out with reasonable dispatch and the books, papers or documents in question shall be promptly thereafter returned to the person whose affairs are being investigated. Removal of books, etc.

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents. Admissibility of copies

(7) The Minister or Director may appoint any expert to examine books, papers, documents or things examined under clause *a* of subsection 2 or under subsection 4. Appointment of experts

Report

(8) Where, upon the report of an investigation made under subsection 1, it appears to the Director that a person may have contravened any of the provisions of this Act or the regulations, the Director shall send a full and complete report of the investigation, including the report made to him, any transcript of evidence and any material in the possession of the Director relating thereto, to the Minister.

Order to
refrain
from dealing
with assets

12.—(1) Where,

- (a) an investigation of any person has been ordered under section 11; or
- (b) an order has been issued against a person under section 6 or 7; or
- (c) an assurance of voluntary compliance has been given under section 9,

the Director, if he believes it advisable for the protection of consumers of the person referred to in clause *a*, *b* or *c* may, in writing or by telegram, direct any person having on deposit or under control or for safekeeping any assets or trust funds of the person referred to in clause *a*, *b* or *c* to hold such assets or trust funds or direct the person referred to in clause *a*, *b* or *c* to refrain from withdrawing any such assets or trust funds from any person having any of them on deposit or under control or for safekeeping or to hold such assets or any trust funds of clients, customers or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), *The Judicature Act*, *The Corporations Act*, *The Business Corporations Act* or the *Winding-up Act* (Canada), or until the Director revokes or the Tribunal cancels such direction or consents to the release of any particular assets or trust funds from the direction but, in the case of a bank, loan or trust company, the direction only applies to the office, branches or agencies thereof named in the direction.

R.S.C. 1970,
cc. B-4, W-11

R.S.O. 1970,
cc. 228, 89, 53

Bond in
lieu

(2) Subsection 1 does not apply where the person referred to in clause *a*, *b* or *c* of subsection 1 files with the Director,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of a guarantee company approved under *The Guarantee Companies Securities Act*; or
- (c) a bond of a guarantor, other than a guarantee company, accompanied by collateral security,

R.S.O. 1970,
c. 196

in such form, terms and amount as the Director determines.

(3) Any person in receipt of a direction given under subsection 1, if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just.

Application
for
direction

(4) Any person referred to in clause *a*, *b* or *c* of subsection 1 in respect of whom a direction has been given by the Director under subsection 1 may, at any time, apply to the court for cancellation in whole or in part of the direction and the court shall dispose of the application after a hearing and may, if it finds that such a direction is not required in whole or in part for the protection of consumers of the applicant or that the interests of other persons are unduly prejudiced thereby, cancel the direction in whole or in part, and the applicant, the Director and such other persons as the court may specify are parties to the proceedings before the court.

Application
for cancella-
tion of
direction or
registration

13. Any notice or document required by this Act to be served or given may be served or given personally or by registered mail addressed to the person to whom notice is to be given at his last known address and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date.

Service
of notice

14.—(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 10 or 11 shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

Matters
confidential

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel or to the court in any proceeding under this Act or the regulations;
- (c) to inform the consumer involved of an unfair practice and of any information relevant to the consumer's rights under this Act; or

- (d) with the consent of the person to whom the information relates,

Testimony
in civil suit

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations.

Certificate
of Director
as evidence

15. A copy of an order or assurance of voluntary compliance purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

Regulations

16.—(1) The Lieutenant Governor in Council may make regulations,

- (a) requiring persons engaging in a business that includes consumer representations or any class of them to make such returns and furnish such information to the Director as is prescribed;
- (b) requiring any information required or permitted to be furnished to the Director or contained in any form or return to be verified by affidavit;
- (c) subject to subsection 2, adding to the consumer representations that are deemed to be unfair practices under clause *a* of section 2;
- (d) exempting any class of person or type of consumer from this Act or the regulations or any provision thereof;
- (e) requiring the payment of fees in respect of the inspection of public records maintained under section 5;
- (f) prescribing forms for the purposes of this Act and providing for their use;
- (g) prescribing the form, terms and collateral security for bonds given with assurances of voluntary compliance and providing for the forfeiture of bonds and the disposition of the proceeds.

Regulation
re additional
unfair
practices

(2) A regulation under clause *c* of subsection 1 may be made when the Assembly is recessed or not in session and expires with the prorogation of the resumed session or of the next ensuing session, as the case may be.

17.—(1) Every person who, knowingly,

Offences

- (a) furnishes false information in an investigation under this Act;
- (b) contravenes a regulation;
- (c) fails to comply with any order or assurance of voluntary compliance made or entered into under this Act; or
- (d) obstructs a person making an investigation under section 10 or 11,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Every person who engages in an unfair practice^{Idem} other than an unfair practice prescribed by a regulation made under clause c of subsection 1 of section 16, knowing it to be an unfair practice is guilty of an offence and on summary conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(3) Where a corporation is convicted of an offence under^{Corporation} subsection 1 or 2, the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.

(4) Where a corporation has been convicted of an offence^{Directors and officers} under subsection 1 or 2,

- (a) each director of the corporation; and
- (b) each officer, servant or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is a party to the offence unless he satisfies the court that he did not authorize, permit or acquiesce in the offence.

(5) No proceeding under this section shall be commenced^{Limitation period} more than two years after the time when the subject-matter of the proceeding arose.

(6) A representation or advertisement printed, published, distributed, broadcast or telecast by a person on behalf of another in the ordinary course of business under circumstances that are not a contravention of subsection 2 shall^{Exemption re advertisements}

not be deemed to be an unfair practice for the purposes of section 3, but this subsection shall not be applied to affect the application of section 6 to the representation.

Commence-
ment

18. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

19. This Act may be cited as *The Business Practices Act, 1974*.